



EUROPEAN COMMISSION
DG Competition

Case M.8451 - Tronox / Cristal

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Decision on the implementation of the commitments -
Purchaser approval

Date: 17.08.2018



EUROPEAN COMMISSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 17.08.2018
C(2018) 5591 final

PUBLIC VERSION

To the notifying party

Dear Sir/Madam,

Subject: Case M.8451 – Tronox/Cristal
Approval of Venator as purchaser of the 8120 grade business following your letter of 16 July 2018 and the Trustee's opinion of 10 August 2018

I. FACTS AND PROCEDURE

1. On 15 November 2017, following a referral under Article 4(5) of Regulation (EC) No 139/2004 ("the Merger Regulation"), the Commission received notification of an intended concentration pursuant to Article 4 of that Regulation as a result of an agreement by which Tronox Limited ("Tronox" or the "Notifying Party", Australia) would acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, of the whole of the titanium dioxide business of The National Titanium Dioxide Company Ltd. ("Cristal", Saudi Arabia) by way of a purchase of shares ("the Transaction"). By decision of 4 July 2018 ("the Decision") based on Article 8(2) of the Merger Regulation, the Commission declared the Transaction compatible with the internal market subject to conditions and obligations (the "Commitments").
2. Under the Commitments, Tronox committed to divest its 8120 grade activities (the "Divestment Business"). More specifically, the Commitments provide that the Divestment Business shall include:
 - a. all "know-how" used for the production of the 8120 grade,
 - b. all customer contracts and other records relating to the 8120 grade,
 - c. all licences, permits and authorisations used in relation to the 8120 grade business,
 - d. if required by the purchaser, employees with technical and/or customer knowledge of the 8120 grade business,
 - e. all goodwill related to the 8120 grade business including the exclusive right to market this grade,

- f. a transitional supply agreement of a duration of [...], extendable [...], for the production of the 8120 grade at Tronox's Botlek plant, and
 - g. a technical services agreement of a duration of [...], extendable [...], under which Tronox will provide the purchaser with the necessary support for the transfer of production to its facility.
3. By letter of 16 July 2018, Tronox proposed Venator Materials PLC ("Venator") for approval by the Commission as purchaser of the Divestment Business and submitted the Business Transfer Agreement, the Technical Services Agreement and the Transitional Supply Agreement (altogether the "Proposed Agreements")¹. Monitoring Trustee Partners, the appointed Monitoring Trustee (the "Trustee"), submitted on 10 August 2018 an assessment of Venator's suitability as a purchaser (the "Reasoned Opinion"). It concluded that Venator meets the purchaser criteria set out in Section D of the Commitments. In its Reasoned Opinion, the Trustee also indicated that, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

4. Venator is a global manufacturer and marketer of chemical products, which operates 26 manufacturing facilities in 10 countries and employs more than 4 500 people worldwide. Huntsman Corporation owns approximately 53% of Venator's share capital.
5. Venator generated global revenues of EUR 1 892 million in 2017. Venator's sales in the titanium dioxide pigment market amounted to EUR 1 370 million (approximately 72% of its total revenues), half of which was generated from sales in the EEA. Venator has a global titanium dioxide pigment production capacity of approximately [...] metric kilotonnes, which represents around [...]% of global titanium dioxide pigment production capacity. Of Venator's total titanium dioxide pigment capacity, around [...]% relates to sulphate-based manufacturing processes and the remainder to chloride-based production. Venator operates six titanium dioxide pigment plants in the EEA with a total capacity of approximately 600 metric kilotonnes.
6. In order to be approved by the Commission, the Purchaser² must fulfil the following criteria:³

¹ This Business Transfer Agreement, together with the Technical Services Agreement and Transitional Supply Agreement, sets out the terms and conditions governing the transfer of the Divestment Business from Tronox to Venator. The Technical Service Agreement sets out the terms and conditions under which Tronox will provide certain technical services to Venator in order to facilitate the transition of the Divestment Business to Venator. The Transitional Supply Agreement sets out the terms and condition under which Tronox will provide a transitional supply of the 8120 grade to Venator in order to facilitate the transition of the Divestment Business to Venator.

² Section A of the Commitments.

³ Paragraph 13 of the Commitments.

- a. The Purchaser shall be independent of and unconnected to Tronox and its Affiliated Undertakings⁴ (this being assessed having regard to the situation following the divestiture);
- b. The Purchaser shall have the financial resources, proven expertise, titanium dioxide pigment quality track record in chloride-based technology, and incentive to complete the technology transfer to one of its chloride-based plants by the end of the Technical Support Period and to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors in the EEA;
- c. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business;
- d. The Purchaser shall, within [...] of Closing, have sufficient chloride-based titanium dioxide pigment capacity and scope to meet current and reasonably foreseeable demand to replicate Tronox's 8120 competitive position in the EEA;
- e. The Purchaser shall provide the Commission with a business plan to develop the Divestment Business in the EEA; and
- f. The Purchaser shall have, or reasonably be expected to have within the transitional timeframe, the ability to distribute 8120 in the EEA or to have procured such services from a third party.

(a) Independence from the Parties

7. The Notifying Party submits that Venator is independent from both Tronox and Cristal (the "Parties"), and from any of their Affiliated Undertakings. In support of this, the Notifying Party submits that:
 - a. Venator does not have any direct or indirect ownership interests in any company owned or controlled by the Parties or any of their subsidiaries;
 - b. no director of Venator or any of its subsidiaries is on the board of any company owned or controlled by the Parties or any of their subsidiaries (and the same applies to Huntsman);
 - c. no company owned or controlled by the Parties or any of their subsidiaries has any direct or indirect ownership interest in Venator or any of its subsidiaries; and

⁴ Section A of the Commitments.

- d. no director of any company owned or controlled by the Parties or any of their subsidiaries is on the board of Venator or any of its subsidiaries.
8. The Trustee in its Reasoned Opinion concluded that there is no significant corporate link between Venator (or its majority shareholder Huntsman Corporation) and Tronox (and its Affiliated Undertakings which would include Cristal post-merger). The information collected by the Trustee confirms that Tronox (and its Affiliated Undertakings) and Venator (and its majority shareholder Huntsman Corporation):
 - a. do not have any shareholders with significant shares in both companies;
 - b. do not have any material shareholdings in each other;
 - c. do not at this time participate in any joint venture, alliance or association (with the exclusion of industry associations or trade groups of which the companies may be members);
 - d. did not have any commercial arrangements in 2017 and 2018 nor do they have any currently; and
 - e. do not have any member of the Management and/or the Supervisory Board in common.
9. In light of all the above, the Commission concludes that Venator (and its majority shareholder, Huntsman Corporation) is independent and unconnected to Tronox (and its Affiliated Undertakings), and therefore meets the Purchaser criterion set out in Section 13(a) of the Commitments.
 - (b) Financial resources, proven expertise, titanium dioxide pigment quality track record in chloride-based technology, and incentive to complete the technology transfer by the end of the Technical Support Period and to maintain and develop the Divestment Business as a viable and active competitive force**
10. The Notifying Party submits that Venator has the financial resources to maintain and develop the Divestment Business. It has vast expertise in the production of titanium dioxide pigments, and a proven track record in the operation of the chloride-based technology as it owns and operates two chloride-based plants, located at Greatham (United Kingdom) and Lake Charles (US). Venator would also have the incentive to maintain and develop the Divested Business.
11. This view is shared by the Trustee. A number of elements point to Venator having the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Tronox and other competitors on the market.
12. First, Venator has sufficient resources to finance the acquisition of the Divestment Business and develop the business going forward. The purchase price for the Divested Business (EUR [...]) and [...] are relatively small compared to Venator's cash and cash equivalents' position in 2017 (EUR 204 million).
13. Second, Venator has significant expertise and solid capabilities in operating titanium dioxide pigment-related businesses:

- a. Sales and marketing: Venator has a team of [...];
 - b. Distribution and warehousing: Venator has a network of [...]; and
 - c. Manufacturing: Venator already owns and operates eight titanium dioxide production facilities, six of which are located in the EEA. It has a specific proven track record in chloride-based technology as it owns and operates two chloride-based plants. In the EEA, Venator has a chloride-based plant at Greatham (United Kingdom) with an annual capacity of 150 000mt.⁵ [...].
14. Third, Venator has the incentive to grow the Divestment Business. [...].
 15. Finally, Venator has the ability and incentive to complete the technology transfer by the end of the Technical Support Period.⁶ [...].
 16. In light of all the above, the Commission concludes that (i) Venator has the financial resources, proven expertise and incentive to complete the technology transfer by the end of the Technical Support Period⁷, and (ii) Venator has also the resources, expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Tronox and other competitors on the market. Therefore, Venator meets the Purchaser criterion set out in Section 13(b) of the Commitments.

(c) Absence of *prima facie* competition concerns

17. The Notifying Party submits that the acquisition of the Divestment Business by Venator will not create any competition concerns as the latter is not active in the market in which the Divestment Business is active.
18. The Trustee considers that the acquisition of the Divestment Business will not create competition concerns in any particular jurisdiction as Venator is not currently active in the supply of chloride-based titanium dioxide pigment for use in paper laminate.
19. To the best of the Commission's knowledge, Venator and Huntsman are not currently active in the product and geographic market where the Divestment Business operates, and the acquisition of the Divestment Business by Venator will not therefore result in any horizontal overlaps between the Divestment Business

⁵ See also paragraphs 23 to 26.

⁶ Schedule of the Commitments.

⁷ The Commission will continuously monitor the implementation of the technology transfer to ensure that this is timely executed. As set out in the Commitments, in case Venator were to require an extension of the Technical Support Period (beyond [...]) the Commission will carefully consider such a request and will only grant an extension if it considers that Venator has used reasonable best efforts to complete the transfer.

and Venator's activities. Nor is Venator active in any market vertically related to the product and geographic market where the Divestment Business operates.⁸

20. In light of the above, the Commission concludes that the the acquisition of the Divestment Business by Venator does not raise *prima facie* competition concerns, and Venator therefore meets the Purchaser criterion set out in Section 13(c) of the Commitments.
21. With respect to the time period within which the proposed divestment can be implemented, the Commission notes that the acquisition of the Divestment Business by Venator would trigger an obligation to notify the competition authorities in Poland and Germany. In view, however, of the procedure in place for conducting these reviews, the Commission considers that it is unlikely that these notification requirements will result in considerable delays to the implementation of the Commitments.
22. The above *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Venator by any competent competition authority under applicable merger control rules.

(d) The Purchaser shall, within [...] of Closing, have sufficient chloride based titanium dioxide pigment capacity and scope to meet current and reasonably foreseeable demand to replicate Tronox's 8120 competitive position in the EEA
23. The Notifying Party submits that Venator will have sufficient capacity to reproduce Tronox's current position (supplying around [...] per year) in the market for chloride-based titanium dioxide pigment for use in paper laminate.
24. The Trustee considers that Venator has the potential to meet the current and any reasonably foreseeable future demand for 8120 at its plant in Greatham. First, [...]. Second, [...].
25. In addition, the Commission notes that [...].
26. In light of the above, the Commission concludes that Venator will have, within [...] of Closing,⁹ sufficient chloride-based titanium dioxide capacity and scope to meet current and reasonably foreseeable demand, and thus to replicate the competitive position of Tronox's 8120 in the EEA. Venator therefore meets the Purchaser criterion set out in Section 13(d) of the Commitments.

⁸ Conglomerate effects are also unlikely to arise. After the acquisition of the Divested Business, Venator may be able to sell both a sulphate grade and a chloride grade to the same customers. However, the investigation conducted by the Commission to assess the Tronox/Cristal transaction suggests that a bundling or tying strategy would not be likely to have material foreclosure effects as different titanium dioxide pigment grades are, in general, not complementary and customers do not have a strong preference or incentive to buy multiple products from a single source.

⁹ Section A of the Commitments.

(e) The Purchaser shall provide the Commission with a business plan to develop the Divestment Business in the EEA

27. Venator has made several submissions to the Commission providing information on the expected volume growth (including indications of projected sales for new customers),¹⁰ and the financial projections (including details on the expected revenues and the most relevant cost components) for the Divestment Business over the 5 years following the acquisition. The Trustee notes that the information provided by Venator in these submissions covers all the relevant elements that typically form part of a business plan.
28. For the purpose of this decision, the Commission considers that Venator has met the requirement (Section 13(e) of the Commitments) of providing sufficient information on its plan to develop the 8120 business in the EEA.

(f) The Purchaser shall have, or reasonably be expected to have within the transitional timeframe, the ability to distribute 8120 in the EEA or to have procured such services from a third party

29. The Notifying Party submits that Venator will have the ability to distribute the 8120 grade in the EEA because it is very well established in the EEA (it is one of the leading titanium dioxide pigment suppliers in the EEA) and owns a comprehensive [...] network.
30. The information collected by the Trustee and the Commission confirms that Venator has the ability to distribute 8120 in the EEA within the transitional timeframe for the following reasons. Venator has [...]. Venator sells approximately [...]% of its titanium dioxide pigment sales directly to its customers through its own sales and technical services network. Venator's distribution of the 8120 grade will also be facilitated by [...].
31. In light of the above, the Commission concludes that Venator will have, within the transitional timeframe, the ability to distribute 8120 in the EEA, and it therefore meets the Purchaser criterion set out in Section 13(f) of the Commitments.

(g) The Divestment Business is being sold in a manner consistent with the Commitments

32. As indicated by the Trustee in the Reasoned Opinion, the Proposed Agreements duly reflects the sale of the entirety of the Divestment Business to Venator. The Commission concludes, therefore, that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market.

III. CONCLUSION

33. On the basis of the above assessment, the Commission approves Venator as a suitable purchaser for the above-mentioned reasons.

¹⁰ [...].

34. On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
35. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that Tronox has complied with its Commitments.
36. This decision is based on paragraph 14 of the Commitments attached to the Commission Decision of 4 July 2018.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General